IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.3237 OF 2005
IN
APPEAL NO.198 OF 1997
IN
SUIT NO.670 OF 1995

1. M/s.Ravi-Pharma & ors. Appellants
vs.
Bank of Baroda Respondent

Applicant no. 2 in person.

Ms.Purnima Pandit i/b.Mr.A.B.Shinde for the respondent no.1.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

P.C.

By this notice of motion, the appellants pray for restoration of Appeal No.198/1997 that came to be dismissed in default on 23.1.2004. The appeal arises out of an order passed in notice of motion no.1026/1995 in Suit No.670/1995.

2. The appellant-applicant no.2 who appears in person submitted that at the time of transfer of Suit to the Debt Recovery Tribunal under Section 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'Act of 1993'), the appeal ought to have been transferred and since it was mistake of the Court the appeal could not have been dismissed in

default and if at all it was dismissed in default, it should now be restored. He also submitted that his one of the advocates Mr.Fernandes had left practicing in Mumbai and the other advocate Mr.M.C.Shah and solicitor M/s.Advani & Co. have taken discharge and, therefore, there was good cause for non-appearance on 23.1.2004.

3. After coming into force of the Act of 1993, all pending cases in the nature of Suit or proceedings covered by the Act were required to be transferred to the Debts Recovery Tribunal constituted under Section 3(1). Proviso appended to Section 31 makes the legal position clear that any appeal pending before any Court shall not be transferred to such Tribunal. Section 31 contemplates transfer of original proceedings to the Tribunal constituted under Section 3(1). It does not contemplate transfer of appellate proceedings to the appellate Tribunal established under Section 8(1) of the Act. There was no question of the appeal being transferred to the Debts Recovery Tribunal on transfer of the Suit. It had to be heard by the Appeal Bench of the High Court. Since on 23.1.2004 neither of the parties appeared, the appeal came to be dismissed in default. The cause shown for non-appearance of the advocate or the appellants is not good cause. Moreover, the Suit that was transferred to the Debts Recovery Tribunal has been finally disposed of.

4. For all these reasons, we are satisfied that the notice of motion does not deserve to be granted.

5. It is dismissed accordingly with no order as to costs.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)